

SB0529 - Land Use Article - Carroll County – Sober Living Houses – Authorization

Hearing before the Senate Finance Committee

Feb. 28, 2023

POSITION: OPPOSE

The undersigned individuals and organizations **OPPOSE** SB 529.

Senate Bill 529 would provide a State sanctioned pathway for Carroll County government to discriminate against people with disabilities through its planning and zoning powers, a violation of the federal Fair Housing Act, Maryland Civil Rights laws, and the Americans with Disabilities Act.

SB 0529 would amend the Md. Land Use Article, § 3-102, specific to Carroll County, which would require the County’s Planning Commission to include a Sober Living House element in the County’s comprehensive plan. SB 0529 would further amend the Land Use Article, Title 9, subtitle 6 (creating § 9-605), adding procedures by which the planning commission would incorporate this new element.

Under the proposed § 9-605, the Carroll County planning commission would be tasked with proposing “the most appropriate and desirable patterns for the general location, character and concentration of sober living houses adjacent to or in close proximity to a residential zone.” This proposal should be completed “on a schedule that extends as far into the future as reasonable.” In addition, a sober living house could not be authorized or constructed in the County until the planning commission approved the location and character as consistent with the comprehensive plan. SB 0529 would also require approval of a special exception prior to authorizing the establishment of a sober living house in Carroll County.

The federal Fair Housing Act (FHA) as amended in 1988, prohibits housing discrimination on the basis of “handicap,” (or “disability”) which is defined as: “(1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.” *See* 42 U.S.C. § 3602(h). Congress enacted the Rehabilitation Act a few years prior to the FHA and clearly included “Individuals who have a record of drug use or addiction” in their definition of “disabled” under the Act. Because Congress incorporated many terms of the Rehabilitation Act into the FHA, courts have included drug and alcohol addiction in their definition of “physical or mental impairment” under the FHA.

By targeting a specific protected class of people with disabilities, and disallowing them from living in any residential community - no matter the number of occupants proposed to live in a particular sober living house - SB0529 appears on its face to discriminate against people with disabilities yet serves no legitimate government interest. *See Potomac Group Home Corp. v.*

Montgomery County, Md., 823 F.Supp.1285, 1295 (D.Md.1993), citing *Horizon House, Developmental Services, Inc. v. Township of Upper Southampton*, 804 F.Supp. 683, 693 (E.D.Pa.1992). See also, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 115 S. Ct. 1776 (1995), in which the Court held that a zoning code section that did not cap the number of people who may live in a dwelling (as long as they were related by “genetics, adoption, or marriage”) was not a maximum occupancy restriction exempt from the FHA under 42 U.S.C. § 3607(b)(1).

Moreover, as the Act’s legislative history indicates, the disability provisions of the FHA were intended to reach a wide array of discriminatory housing practices, including licensing laws which purport to advance the health and safety of communities. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such means as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities. See *Potomac Group Home Corp.*, 823 F.Supp. at 1294, citing H.R.Rep. No. 100–711, 100th Cong., 2d Sess. 24, reprinted in 1988 U.S.Code Cong. & Admin.News at 2173, 2185. The Court further states, “Recognizing the purpose and breadth of provisions of the FHAA, courts have consistently invalidated a wide range of municipal licensing, zoning and other regulatory practices affecting persons with disabilities.” See, e.g., *Marbrunak, Inc. v. City of Stow*, 974 F.2d 43, 47 (6th Cir.1992) (striking down discriminatory fire and safety codes); *Stewart B. McKinney Foundation, Inc. v. Town Plan and Zoning Comm'n*, 790 F.Supp. 1197, 1219 (D.Conn.1992) (invalidating special exception process). *Potomac Group Home Corp.*, 823 F.Supp. at 1295.

Similarly, SB 0529 would violate the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“ADA”), and its implementing regulations, which require the County to administer all of its programs and activities—including its legislative, executive, zoning and code enforcement functions—in a manner that does not discriminate on the basis of disability, and further require the County to “administer [its] services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). In *Olmstead v. L.C.*, the Court noted that Congress explicitly identified unjustified segregation and isolation of persons with disabilities as a “for[m] of discrimination. *Olmstead*, 527 U.S. 581, 600 (1999). Additionally, “[u]nder the ADA, local governments are explicitly prohibited from administering zoning procedures in a manner that subjects persons with disabilities to discrimination on the basis of their disability.” *Tsombanidis v. City of West Haven, Conn.*, 129 F.Supp.2d 136, 151 (D.Conn.2001); see also, *Bay Area Addiction Research and Treatment*, 179 F.3d 725, 732 (9th Cir.1999)(holding that the ADA applies to zoning). See *Pathways Psychosocial v. Town of Leonardtown, MD*, 133 F.Supp.2d 772, 790 (D.Md.2001).

There is some indication that SB 0529 may be a response to requests for an increase in beds or space for those in recovery in Carroll County. If the State of Maryland partakes in Carroll County’s discrimination by making housing unavailable in the County on the basis of disability,

the State and the County may expose themselves to liability which could include both compensatory and punitive damages, as happened to the Town of Cromwell, Connecticut. *See Gilead Community Services v. Town of Cromwell, Connecticut*. No. 3:17-cv-00627 (D.Conn.).

For the reasons set forth above, we urge an unfavorable report on SB 0529.

Respectfully submitted,

Organizations

City Advocates in Solidarity with the Homeless

Disability Rights Maryland

IMAGE Center

Independence Now

Legal Action Center

Main Street Housing, Inc.

NAMI Maryland

National Federation of the Blind of Maryland

On Our Own of Maryland

Patient Providers, LLC

Peer Wellness & Recovery Services, Inc. (PWRS)

People on the Go

Public Justice Center

Shared Support Maryland, Inc.

The Freedom Center, Inc.